

United Parcel Service and International Brotherhood of Teamsters Local 795, Petitioner. Case 17-UC-201

November 7, 1997

DECISION ON REVIEW AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX
AND HIGGINS

On January 24, 1997, the Board granted the Petitioner's Request for Review¹ of the Regional Director's Decision and Order dismissing the petition to clarify the bargaining unit to include administrative assistants employed within the territorial jurisdiction of the Petitioner. The Board directed that the Order be served on Teamsters United Parcel Service National Negotiating Committee (TUPSNNC), Party to the Contract, which was requested to file a Statement of Position. Thereafter, TUPSNNC filed a Statement of Position urging the Board to reverse the Regional Director's decision and to process the instant petition. In addition, the Employer, United Parcel Service (Employer or UPS), resubmitted its posthearing brief to the Regional Director as its brief on review.

The issue raised on review is whether it is appropriate to accrete solely those administrative assistants employed within the Petitioner's territorial jurisdiction, who compose only a small part of the employees in those classifications employed in the nationwide bargaining unit. Having carefully reviewed the entire record, the Board has decided to affirm the Regional Director's dismissal of the petition for the reasons stated in the decision and order (pertinent parts of which are attached as an appendix) and for the additional reasons set forth below.

In 1979, the Employer and the International Brotherhood of Teamsters executed their first National Master Agreement consolidating all previously recognized local units into a single nationwide bargaining unit. Prior to 1979, approximately 220 local unions of the Teamsters had individual bargaining relationships with various UPS facilities located throughout the country. See *United Parcel Service*, 303 NLRB 326 (1991), *enfd.* 17 F.3d 1518 (D.C. Cir. 1994), *cert. denied* 115 S.Ct. 722 (1995). Thus, the parties have operated under a single nationwide bargaining unit for nearly 20 years. The employees in the nationwide unit are represented jointly by TUPSNNC and the Teamster Local Unions.

UPS' nationwide operations are divided into 68 districts. The State of Kansas constitutes one such district. The Petitioner represents the employees employed at certain Kansas facilities that are within its territorial jurisdiction. Three other Teamster Local Unions also

represent employees working at UPS facilities within the Kansas district.

UPS employs nationwide in excess of 800 individuals classified as administrative assistants.² None of these administrative assistant positions has been included in the bargaining unit in the past. There are 163 administrative assistants employed within the Kansas district. The Petitioner seeks to accrete only the 14 administrative assistants who are employed within the Petitioner's territorial jurisdiction.

Within the administrative assistant classification, there are different types of positions with specified duties.³ Each type of administrative assistant performs the same duties regardless of location. For example, a loss prevention administrative assistant employed at the Employer's Pittsburgh, Kansas, facility performs the same functions as a loss prevention administrative assistant employed at the Employer's Pittsburgh, Pennsylvania, facility.

The Regional Director observed that the 14 administrative assistants sought by the Petitioner comprise only a small part of the employees in that classification nationwide, and concluded that it "would not be appropriate to include only some of these positions in the nationwide bargaining unit while leaving others out of the bargaining unit." Accordingly, he dismissed the petition.

The Regional Director's conclusion is in accord with Board precedent. "An accretion, as the term has been employed by the Board and the courts, is merely the addition of new employees to an already existing group or unit of employees." *Gould, Inc.*, 263 NLRB 442, 445 (1982). If, however, the employees sought to be included "have a close community of interest with other . . . employees who are not sought but perform similar functions," the Board will not permit accretion. *Armstrong Rubber Co.*, 180 NLRB 410, 411 (1969).

Here, the administrative assistants sought to be added to the nationwide unit are limited to those working at facilities within the jurisdiction of the Petitioner. There are employees in similar positions at other UPS facilities throughout the country who have similar duties, yet the petition does not seek to include them. Under the principles set forth above, and given the nationwide scope of the unit, we find that the Regional Director correctly dismissed the unit clarification petition due to the failure to include other employees with like functions and interests. Stable and efficient labor relations would not be promoted by fragmenting the employees in the administrative assistant classification and adding some, but not all, to the nationwide unit.

² The record does not disclose the precise number of administrative assistants employed nationwide.

³ There are 16 types of administrative assistants within the Kansas district; 5 types are employed within the Petitioner's jurisdiction.

¹ Member Higgins dissented and noted that he would deny review.

We find no merit in our dissenting colleague's arguments in favor of accreting the administrative assistants on a piecemeal basis. First, he contends that because the nationwide unit is not uniform with respect to a different classification (operations clerks), he would not require uniformity with respect to the administrative assistant classification. However, the mixed treatment of the operations clerk classification is essentially an anachronism attributable to the parties' decision in 1979 to consolidate the numerous local units into a single nationwide unit. At that time, operations clerks were included in some local units, while excluded from others. Consequently, the consolidation of the local units resulted in certain operations clerks being placed in the nationwide unit and other operations clerks being excluded from the nationwide unit. In our view, differences that existed at the local level nearly 20 years ago with respect to the operations clerk classification are scarcely a sufficient basis for a decision today to accrete a fragment of the administrative assistant classification into a small portion of the nationwide unit.

Second, our dissenting colleague states that he would litigate the unit placement of administrative assistants on a local-by-local basis because not all administrative assistant positions exist at every location. Again, our dissenting colleague is focusing on the situation as it existed in 1979 when there were numerous local bargaining units. Because the bargaining unit in 1997 is nationwide in scope, the variation in the number of administrative assistant positions existing at each location is irrelevant.

Finally, our dissenting colleague claims that to clarify the bargaining unit on a nationwide basis would place an undue strain on the Board's limited resources. We disagree. Given the fact that each type of administrative assistant performs the same duties regardless of location, it could as well be argued that clarifying the unit on a local-by-local basis would result in much duplicative and wasteful litigation. In any event, the Board's responsibility to promote stable labor relations must take precedence over considerations of administrative convenience. Processing the instant petition would clearly be inconsistent with the parties' practice since 1979 of bargaining on the basis of a single nationwide unit.⁴ Accordingly, the petition must be dismissed.

⁴The Petitioner and TUPSNNC rely on a March 22, 1996 decision and order by the Regional Director for Region 8 which clarified the bargaining unit to include all administrative assistants assigned to one of the Employer's Ohio facilities. *United Parcel Service, Inc.*, 8-UC-302. On August 8, 1996, the Board denied the Employer's request for review. However, that case, unlike this one, did not raise the issue of whether accreting a small proportion of the administrative assistant classification would be contrary to the nationwide scope of the unit.

ORDER

The petition is dismissed.

CHAIRMAN GOULD, dissenting.

Contrary to my colleagues, I would reverse the Regional Director, reinstate the petition, and remand the case for further processing.

The Regional Director dismissed the instant unit clarification petition because the Petitioner (Local 795) seeks to include in the existing nationwide unit only those positions classified as administrative assistants who are employed at facilities within its territorial jurisdiction. Since the petitioned-for employees comprise only a small part of the administrative assistants employed nationwide, the Regional Director found it inappropriate to include some of these positions while leaving others outside of the unit.

By affirming the Regional Director, my colleagues have determined that the only acceptable method of clarifying the existing unit is on a nationwide basis. I disagree.

Prior to the formation of the current bargaining unit, approximately 220 local unions represented separate local bargaining units at various Employer facilities throughout the country. Some of these units included operations clerks while others did not. In 1979 when the parties created the nationwide unit, the contract covered only those clerks who had previously been represented. To date, the unrepresented operations clerks remain outside the unit. See *United Parcel Service*, 303 NLRB 326 (1991). Consequently, since the nationwide unit is itself not uniform, i.e., some classifications of employees are included in some facilities and excluded at others, I would not require uniformity with respect to the administrative assistant classifications.

In addition, not all administrative assistant classifications exist at every location or within the territorial jurisdiction of the various locals which represent these employees. For example, in the territorial jurisdiction represented by Local 795, there are only 5 separate administrative assistant positions; in the Kansas district, there are 16 different types of administrative assistants. Thus, although there are similar administrative assistant positions throughout the country, each local represents a different grouping of these classifications. These variations also destroy the uniform nature of the nationwide bargaining unit, and therefore I would litigate the unit placement of administrative assistants on a local by local basis.¹

¹In pointing out the fact that local units differ from one another with respect to employee composition, I am not, as the majority claims, "focusing on the situation as it existed in 1979." Instead, I am emphasizing differences which exist today. And it is in recognition of those differences that I think clarification on a local level is appropriate.

Lastly, to litigate in one proceeding the numerous administrative assistant positions which cover hundreds of employees across the country would result in an unnecessary strain on the Board's limited resources. Although a decision to litigate each local separately might result in numerous unit clarification petitions, these cases could be easily and efficiently handled by the Board's Regional Offices. In fact, by ruling on the unit placement issues in this proceeding, the Regional Director would be setting a standard with respect to the positions at issue here which could then be applied in subsequent cases involving these and perhaps other administrative assistant classifications.

Accordingly, although it might be desirable in some situations to require that accretion encompass all individuals in a classification rather than only some, I do not find this principle controlling where, as here, the unit is a nationwide bargaining unit with hundreds of employees in dispute, the classifications included in the unit vary from location to location, and some of the positions sought to be accreted are present at some locations but not others. I would, therefore, reverse, reinstate the petition, and remand the case to the Regional Director to determine whether the administrative assistant classifications sought by Petitioner Local 795 within its geographical territory have a sufficient community of interest to be accreted to the unit.

APPENDIX

DECISION AND ORDER

....

The Petitioner seeks to clarify the existing unit by including the classification of administrative assistants who work in facilities within the jurisdiction of the Local Union.

The Employer is engaged in the interstate transportation and distribution of parcels. The Employer has maintained a bargaining relationship with the International Brotherhood of Teamsters and its affiliated local unions since 1919. In 1979, the International Union and the Employer executed their first National Master Agreements consolidating bargaining units throughout the country into one nationwide bargaining unit. Thus, under article 2, section 1 of the current National Agreement, which is effective by its terms from August 1, 1993, through July 31, 1997, it is provided that:

All employees, Unions and the Employer covered by this Master Agreement and the various Supplements, Riders and Addenda thereto shall constitute one (1) bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements Riders and/or Addenda in separate agreements is for convenience only and is not intended to create separate bargaining units.

The language in the first sentence quoted above is repeated in article 3, section 1 of the contract, which is the recognition clause. The two preceding National Agreements, dating back to 1987, contained identical provisions. The parties in

the instant matter also operate under a Central Conference of Teamsters Supplemental Agreement. That supplement makes no reference to the description of the bargaining unit.

The bargaining unit defined in the National Agreement, article 1, section 2, encompasses feeder drivers, package drivers, sorters, loaders, unloaders, porters, office clerical clerks, mechanics, maintenance personnel, car washers, employees in the Employer's air operation, and, to the extent avowed by law, employees in the export and import operations performing load and unload duties. Additionally, the agreement indicates that, effective August 1, 1987, employees who are assigned to package center operations, hub center operations, and/or air hub operations who handle and progress merchandise are included in the unit. The agreement excludes supervisors from the unit.

The Petitioner represents the employees and administers the National Agreement at facilities located in Parsons, Wichita, Hutchinson, Great Bend, Dodge City, and Garden City, Kansas, all of which are within its territorial jurisdiction. Under the Employer's organizational structure, the State of Kansas comprises a separate district. Within that district, there are three other Teamsters Local Unions, Locals 823 (Pittsburg, Kansas), 696 (Lawrence, Topeka, Ottawa, Emporia, Manhattan, Salina, Hays, and Colby, Kansas) and 41 (Kansas City and Lenexa, Kansas) that represent employees.

The administrative assistant position is a broad classification which encompasses various jobs (or different types of administrative assistants) with specified duties. Within the facilities located in the jurisdiction of Local 795, there are 14 administrative assistants employed by the Employer, in five different jobs, who are in issue. Those jobs are revenue auditor, air administrative assistant, hazardous materials auditor, international auditor, and package center administrative assistant. Additionally, the Petitioner seeks to include in the unit five administrative assistant positions (two revenue auditor positions, one air position, and one package center position) that are occupied by temporary employees employed by another employer, Norrell. Within the Employer's district of Kansas, there are employees at other facilities outside the territorial jurisdiction of Local 795 who work in the positions of air administrative assistant, hazardous material auditor, and package center administrative assistant. On the whole, there are 16 different types of administrative assistants throughout the district of Kansas, encompassing 163 employees. There are similar administrative assistant positions at facilities of the Employer throughout the nation. None of these positions have been included in the bargaining unit in the past.

The revenue auditor administrative assistant position was first established and filled in the Kansas district in 1987. The duties of that position, which have not changed significantly since its inception, involve checking packages to see that customers have assessed themselves the proper shipping charge. Many of the Employer's customers bill themselves for shipping charges and the revenue auditor protects against lost revenue from under charging by customers. There is one revenue auditor in Wichita, as well as two temporary employees in Wichita, who perform these duties.

The air administrative assistant position was first established in the Kansas district in March 1992. The duties of that position include recording the arrival times of aircraft, the aircraft number, the number of packages on the aircraft,

and the number of packages bound for other Employer centers. These employees notify the management personnel of the arrival of aircraft so they will know when to expect their merchandise. They track the weight and placement of packages on aircraft for FAA record keeping purposes. There is one person in this position in Wichita and one in Kansas City, as well as one temporary employee in Wichita.

The hazardous material auditor position was first established in August 1995. It was created in response to a settlement with OSHA, whereby the Employer committed to increase its audits of hazardous materials. The duties of the position are to insure that hazardous packages are properly labeled and packaged. There is one person in this classification in Wichita, one in Lenexa, and one in Kansas City.

The international auditor was first established in the Kansas district in July 1995. The duties of that position include checking international packages to assure that the proper documentation is affixed to the package. The purpose of that job is to assure that there is not a problem with customs that would delay the shipping of a customer's package. There is only one employee in this position, who is located at the Wichita facility.

The package center administrative assistants were first established in the Kansas district in June 1995. These positions are designated as "AM" or "PM," depending on the time of day that they work. The duties are slightly different for each, due to the status of deliveries at different times of the day. The PM employees upload from the driver's hand-held computer (called a Delivery Information Acquisition Device, or DIAD) the delivery information recorded throughout the day by the driver. Those employees also retrieve the drivers time card, which is stored on the DIAD, and review it for completeness. They check on some customer complaints by

reviewing information stored in the DIAD. The AM employees dispatch² air drivers, check on some customer complaints, file driver vehicle inspection reports, and obtain fuel usage information from the computer for reconciliation purposes. There are 25 package center administrative assistants throughout the district of Kansas, including one temporary (employed by Norell) and 10 permanent employees at facilities within the Petitioner's territorial jurisdiction.

As is evident from the above, the Petitioner seeks to include in the existing nationwide unit only those administrative assistants, whether employed by the Employer or a temporary employment agency, who are employed at facilities within the territorial jurisdiction of the Local Union. Those employees comprise only a small part of the employees in the same classifications throughout the country. As the record demonstrates, many identical positions exist even within the Employer's district of Kansas, which encompasses those facilities sought by the Petitioner. It would not be appropriate to include only some of these positions in the nationwide bargaining unit while leaving others outside the unit.³ Thus, the unit will not be clarified to include the administrative assistants as requested in the Petition.

² The parties stipulated that none of the administrative assistants at issue are supervisors as defined in Sec. 2(11) of the Act.

³ Additionally, with regard to the air administrative assistants and the revenue auditors, it would be inappropriate to accrete those positions in any event as they were in existence and excluded from the bargaining unit at the time the current collective-bargaining agreement was entered into. *Wallace-Murray Corp.*, 192 NLRB 1090 (1971); *Plough, Inc.*, 203 NLRB 818 (1973); *Union Electric Co.*, 217 NLRB 666 (1975).